



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5-4-2007

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

C.M.A.Nos.63, 394, 663, 670, 770 and 1050 of 1999

M/s.P.M.S.Traders,
47, Ramaswami Street,
Mannady, Madras.

... Appellant in C.M.A.Nos.63 and 770 of 1999

1. M/s.Jaitex Lungi Company,
47, Ramaswami Street,
Mannady, Madras.

2. M/s.P.M.S.Traders,
47, Ramaswami Street,
Mannady, Madras.

... Appellants in C.M.A.Nos.394, 663, 670 and
1050 of 1999

-vs-

1. Union of India, owning
Southern Railway, rep. by
its General Manager,
Chennai-600 003.

2. Union of India, owning
Northern Railway, rep. by
its General Manager,
New Delhi.

... Respondents in all the appeals

Civil Miscellaneous Appeal No.63 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in O.A.I.No.833 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.

Civil Miscellaneous Appeal No.394 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in O.A.No.1213 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.



Civil Miscellaneous Appeal No.663 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in T.A.I.No.389 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.

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Civil Miscellaneous Appeal No.670 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in T.A.I.No.366 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.

Civil Miscellaneous Appeal No.770 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in T.A.I.No.588 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.

Civil Miscellaneous Appeal No.1050 of 1999 is filed under Section 23 of Railway Claims Tribunal Act, 1987 against the order dated 12.6.1998 in T.A.I.No.328 of 1990 on the file of the Railway Claims Tribunal, Madras Bench.

For appellants : Mr.B.T.Seshadri
in each of the
Petitions

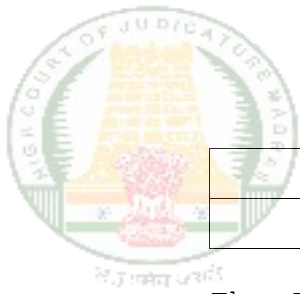
For respondents: Mr.V.G.Suresh Kumar

COMMON JUDGMENT

The above Civil Miscellaneous Appeals arise out of the orders passed by the Railway Claims Tribunal dismissing the O.A.No.833 of 1990, O.A.No.1213 of 1990, T.A.I.No.389 of 1990, T.A.I.No.366 of 1990, T.A.I.No.366 of 1990 and T.A.I.No.588 of 1990 & TAI.328 of 1990 filed by the appellants herein claiming compensation against the respondent railways for non-delivery of the goods.

2. C.M.A.No.63 of 1999:- The appellant is manufacturer and exporter of handloom lungies and shirtings and in the course of business they despatched cotton shirtings to New Delhi on the Northern Railway under the following Railway Receipts:-

Sl.No.	R.R.No.	Date	Value
1	PA 070889	3/8/84	Rs.10,857.00
2	PA 070891	3/8/84	Rs.11,503.00
3	PA 094919	3/19/84	Rs.8,949.00



Sl.No.	R.R.No.	Date	Value
4	PA 096154	3/27/84	Rs.10,000.00

The Railway Receipts were taken in the name of self. The original Railway Receipts together with the Invoices and Hundies, which were drawn in favour of Buyer M/s.Amarapalli Boutique, New Delhi were sent to Punjab & Sind Bank, New Delhi with instructions to the bankers to deliver the documents, on collection of the amount due under the Hundies. The Railway Receipts drawn on self were duly endorsed in favour of Punjab & Sind Bank, New Delhi to enable them to endorse the same in favour of buyer after receipt of payment. When the documents reached the destination and information was given to the buyer, the buyer did not clear the documents in spite of extension of time. Therefore, the appellant instructed their banker to deliver the Railway Receipts 'free of payment' to one Mr.V.K.Goyal, New Delhi to enable him to take delivery of the goods. The Bank delivered the documents to Mr.V.K.Goyal, who in turn took the documents i.e., Railway Receipts, etc., to New Delhi Railway Station for clearing the goods. At that time the Railway authorities informed V.K.Goyal stating that the goods covered under the aforesaid Railway Receipts were delivered on Indemnity Bond on various dates and the goods were not available for delivery. Thereafter, the Plaintiff contacted the Booking station, Southern Railway enquiring whether any Indemnity Bond was executed and the Southern Railway stated on verification that no Indemnity Bond was executed at Madras Central. Therefore, the appellant herein by communication dated 10.8.1984 wrote to the Chief Claims Officer, Southern Railway, Madras informing him about the non-delivery of the goods and demanded compensation and this was followed by another letter dated 13.8.1984 addressed to the General Manager, Northern Railway, New Delhi. The endorsed consignee also made a claim, which was acknowledged by the Northern Railway. There was no reply to any of the communication and a legal notice dated 21.8.1984 under Section 80 CPC addressed to the General Manager of both the Railways were sent and acknowledged. As there was no proper response from the Railway authorities, the appellant filed the suit O.S.No.5476 of 1987 on the file of the City Civil Court, Madras, for compensation on account of non-delivery of the goods. The appellant found that the goods were delivered to unauthorised persons, under forged or fabricated documents and the Railway authorities acting in collusion, have delivered the goods to the person who is not entitled to the same, thereby causing loss to the appellant. It was under those circumstances, the appellant had filed the suit before the City Civil Court, Madras, which was transferred to Railway Claims Tribunal, and renumbered as O.A.No.833 of 1990.

3. Before the Railway Claims Tribunal the defendants/respondents herein filed written statement admitting despatch of goods from Madras-Central to Delhi. The defendants stated that as per the contract of carriage, the goods were carried to the



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destination and made available for delivery within 7 days after termination of transit. However, the goods were taken delivery on production of valid Indemnity Bonds by intended consignee in whose favour the Hundi and Invoices were drawn. The Indemnity Bonds were also executed by the consignor/consignee to deliver the consignment to the originally intended consignee i.e., Amarapali Boutique. It was contended that the respondents are not liable for the loss on account of non-delivery of the goods, howsoever, caused, seven days after termination of transit in terms of Section 77(2) of Indian Railways Act, 1890 (Act 9 of 1890). It was also submitted that the respondents railway are not liable for any loss, destruction, damage, non-delivery of the goods where there has been fraud practised by the consignor or the consignee or agent of the consignor or consignee under Section 78(b) of the Indian Railways Act. Reply Statement was filed stating that the goods were carried to destination and made available for delivery, but no one turned up for taking delivery within 7 days of termination of transit. However, the goods were taken delivery on production of valid Indemnity Bond on 14.4.1984 and on 26.4.1984. It was also stated that the delivery had been taken on indemnity Bond by the Agent of M/s.Amarapalli Botique and appellant and it was further stated that the consignment was received at destination on 28.2.1984 and 7.3.1984 and delivery was effected on 14.4.1984 and 26.4.1984 on Indemnity Bond. It was further contended that the defendants are not liable for loss, non-delivery as no one turned up for taking delivery within 7 days after termination of the transit.

4. On the above pleadings, the following issues have been framed for trial:-

"(1) Whether the Railways delivered the goods at the destination on a proper Indemnity Bond and are therefore liable to pay compensation?

(2) Whether any fraud was practised by the consignor or consignee or their agent and whether the Railways are therefore not liable to pay compensation in view of Sec.78(b) of Indian Railways Act?

(3) Whether the goods arrived at destination and whether the goods were not taken delivery of by the party within the time allowed by law and whether the Railways are therefore exonerated of their liability under Sec.77(2) of Indian Railways Act?

(4) Whether the Railways exercised reasonable foresight and care in the carriage of the goods?



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(5) Whether there was valid claim under Section 78(b) of the Railways Act?

(6) Whether the Petitioner is entitled to any compensation and if so, how much?

(7) What relief is the Petitioner entitled to?"

5. The parties did not file any affidavit nor any oral evidence has been adduced, but documents have been marked by consent. On behalf of the appellants/applicants Exs.A-1 to A-14 were marked and on behalf of respondents railway no documents were marked.

6 (i) The matter was heard by the Vice-Chairman and (Technical) Member of Railway Claims Tribunal and the Vice-Chairman on Issue No.(1) held that no Indemnity Bond was executed in respect of the consignment at Madras-Central and hence the appellant had not executed Indemnity Bond in respect of the suit consignment for delivery of the consignment. The Vice-Chairman held that the argument of the counsel for Railways that the appellant might have taken delivery of the consignment, cannot be sustained.

(ii) Regarding Issue No.(2) the Vice-Chairman of Railway Claims Tribunal held that the Railway staff have colluded in effecting delivery of the suit consignment under forged and defective endorsement and on bogus Indemnity Notes prepared in the appellant's name by staff of second Respondent Railways and also colluded in the act and the Railway staff themselves are involved in such a nefarious act and it is not a wrong delivery or delivery under bona-fide mistake. The Vice-Chairman also held that in view of the fact that the consignment has been released on the basis of bogus Indemnity Notes prepared in the name of the appellant by the Railway staff in collusion with private person, the Railway Administration are not exonerated of their liability under Section 77(2) of Indian Railways Act.

(iii) Regarding Issue No.(4) in view of the earlier finding that goods were released on bogus indemnity bonds after termination of transit, no finding has been recorded.

(iv) Regarding Issue No.(5) the Vice-Chairman of Railway Claims Tribunal held that proper notice has been given.

(v) regarding Issue Nos.(6) and (7) the Vice-Chairman held that the appellant is entitled to compensation and on the question of 'interest' held that the appellant is entitled to 'interest' at the rate of 6% per annum as a measure of damage on the locked up capital upto the date of the suit and thereafter at 12% per annum.



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Accordingly, the Vice-Chairman allowed the Application in part and awarded Rs.41,309/- as compensation together with interest at 6% per annum on the locked-up capital amounting to Rs.6,486/- and further interest at 12% per annum on Rs.41,309/- from the date of filing of the suit till date of recovery with proportionate costs.

7. The Technical Member of Railway Claims Tribunal, while agreeing with the findings of the Vice Chairman in Issue Nos.4 and 5 stated that he is unable to agree with the findings of the remaining issues i.e., Issue No.1, 2, 3, 6 and 7. In other words the Technical Member held that the Railway Administration is absolved of their liability under Section 77(2) of Indian Railways Act, as no application for delivery has been made by the consignee or consignor within 7 days after termination of transit. The Technical Member relied on the judgment of the Madras High Court reported in AIR 1985 Madras 360 (Union of India - vs. - M/s.St.Joseph's Textiles) and which was also confirmed by the Supreme Court in the case reported in AIR 1993 SC 1692. According to the Technical Member the goods were not taken delivery of by the party within the time allowed by law and therefore the Railways were exonerated from their liability. The Technical Member further held that though in this case the delivery was effected under 4 Indemnity Bonds that would not make any difference as far as the liability of the Railways under Sec.77 (2) of Indian Railways Act. Regarding the claim for 'interest' the Technical Member disallowed the pre-suit interest and on those findings the Application was dismissed.

8. In view of the difference of opinion expressed by the Vice-Chairman and Technical Member, as required under Sec.21 of Railway Claims Act, the matter was referred to the third Member and the points which were formulated for the opinion of the Third Member are:-

"(1) Whether the Railway staff themselves are involved in nefarious act of releasing the suit consignments under bogus Indemnity Notes and it is not wrong delivery or a delivery made under a bona-fide mistake, and it is not open to the Railways to take shelter under Sec.77(2) of the Indian Railways Act, 1890 to defeat the claim of the Applicants for no fault of theirs?

(2) Whether the respondent-Railways is absolved of its liability for wrong delivery under Sec.76-B of the Railways Act, 1890 inasmuch as under the said provision the Railway Administration is absolved of its liability if it in good faith delivers the goods on the production of Original Railway Receipt and the original railway receipt having not been



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produced and the staff of the second respondent-Railways having also colluded in effecting delivery of the suit consignments not under defective endorsements on the Railway Receipts, but under bogus Indemnity Notes prepared in the applicant's name and the staff of the second respondent-railways having also colluded in the said act?

(3) Whether M/s.Amarpali Boutique is the buyer-consignee and practised fraud by presenting Indemnity Bonds which were bogus and hence Railways are not liable to pay compensation in view of Sec.78(b) of the Indian Railways Act? and whether can we go into this question in the absence of pleadings in the written statement?

(4) Whether the railways are completely exonerated of their liability whatever may be the cause thereof, including under Sec.77(2) of the Railways Act, the goods having not been taken delivery by the party within the time allowed by law?

(5) Whether the applicant is entitled to recover interest by way of damages for the locked up capital?

(6) Whether the applicant is entitled to recover a sum of Rs.41,309/- as compensation together with interest on the locked up capital at 6% per annum or whether the Application is liable to be dismissed?"

9. The third Member went into the issues and held on Point No.1 that even assuming that the Railway staff themselves are involved in the nefarious act of releasing the consignment under the bogus Indemnity Notes and for that reason the protection under Sec.76-B of the Railways Act is not available to the Railways, still the Railway Administration is not liable for non-delivery of the goods to the rightful claimants under Sec.77(2) of Indian Railways Act. (Provided the wrong delivery is made with whatever motive after the expiry of 7 days after the termination of transit). On Point No.2, the third Member of Railway Claims Tribunal held that in the light of facts of the case, the Railway Administration is not absolved from their liability under sec.76-B of Indian Railways Act. However, he held that since the wrong delivery took place after 7 days of termination of transit, thus making the goods not available for delivery to the rightful claimants, the Railway Administration can plead that it is not responsible for such non-



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delivery as per provisions contained in Section 77(2) of Indian Railways Act. Regarding Point No.3, the Third Member held that even if it is assumed that Railways are liable under Section 76-B of the Indian Railways Act, 1890, still the Railways can get themselves absolved and exonerated from any liability by virtue of Section 77(2) of Indian Railways Act, 1890. Regarding Point No.(4), the third Member held that the Railways are completely exonerated from their liability whatever may be the case thereof under Section 77(2) of the Indian Railways Act, 1890 if goods are not taken delivery of by the Party with the time allowed by law. Regarding Point No.5, (i.e.) claim for interest, the Third Member held that the Appellant is not entitled to interest for the period prior to the suit though he is entitled to the same as a measure of damage. Regarding Point No.6, the Third Member held that in view of the opinion given on Points 1 to 5 the Application was liable to be dismissed and accordingly the Application was dismissed. The Civil Miscellaneous Appeal No.63 of 1999 is against the rejection of the claim application.

10. It is stated that the basic facts for the purpose of disposal in all the Civil Miscellaneous Appeals are almost similar to that of the appeal in C.M.A.No.63 of 1999 as stated above. C.M.A.Nos.63 of 1999 and 770 of 1999 are filed by M/s.P.M.S.Traders and C.M.A.Nos.394, 663, 670 and 1050 of 1999 are filed by M/s.Jaitex Lungi Company along with M/s.P.M.S.Traders. The learned counsel for the appellants categorically states that factually all cases are similar as that of the prayer in the Civil Miscellaneous Appeal No.63 of 1999 and the respondents' counsel affirms the same. Hence, all the above six appeals are taken together and disposed of by this common judgment.

11. Heard Mr.B.T.Seshadri learned counsel appearing for the appellants and Mr.V.G.Suresh Kumar, learned counsel appearing for the respondents, in all the appeals.

12. Learned counsel for the appellants submitted that the Vice Chairman of Railway Claims Tribunal held that Section 77(2) of the Indian Railways Act, 1890 will not apply to the facts of the present case, however, the (Technical) Member and Third-Member of Railway Claims Tribunal held that though the delivery had been made to parties, who are not entitled to the goods, on false and fabricated Indemnity Notes, the Railway Administration is exonerated of the liability under Section 77(2) of Indian Railways Act, 1890 since there was no claim for delivery by the consignor or consignee within 7 days after termination of transit. He, therefore, submitted that inasmuch as the claims of the appellants have been dismissed on the ground of no liability under Section 77(2) of Indian Railways Act, 1890, the provisions of Section 77 of Indian Railways Act, 1890, should be looked into in the facts and circumstances of the appellants case.



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13. Section 77 of the Indian Railways Act, 1890, which is relevant for the purpose of this case reads as follows:-

"77. Responsibility of a railway administration after termination of transit.-

(1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872 (9 of 1872), for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway within a period of [seven days] after the termination of transit:

Provided that where the goods are carried at owner's risk rate, the railway administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of [seven days] after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the Second Schedule, animals and explosives and other dangerous goods carried by railway, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage or wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed from the railway premises.

(5) For the purposes of this Chapter,-

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from



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railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage;

(b) "demurrage" and "wharfage" have the meanings respectively assigned to them in clause (d) and clause (h) of Section 46C."

Learned counsel for the appellants/applicants, therefore, submitted that the Railway administration is liable as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, upto 7 days after the termination of transit and thereafter, the railway administration will not be responsible, in any case, for loss, destruction, damage, deterioration or non-delivery of goods carried by the railway arising after expiry of the period of seven days after termination of transit. The railway will have to establish their case for exonerating themselves under Section 77(2) of the Indian Railways Act, 1890 by proving the date of termination of transit in terms of Section 77(1) of the Indian Railways Act, 1890.

14. The termination of transit has been explained in Sub Section 5 of Section 77(2) of Indian Railways Act, 1890. It is stated in Section 77(5)(a) of the Act that unless and otherwise previously determined transit terminates on the expiry of the Free time allowed (after arrival of goods in destination) for the unloading from the Railway wagons without payment of demurrage and such unloading has been completed within the Free time allowed, the transit terminates on the expiry of Free-time allowed for removal of animals or goods from the railway premises without payment of wharfage. The important aspect, which the Railway Administration has got to prove before claiming that they have to be exonerated under Section 77(2) of Indian Railways Act, 1890, are the following:-

a) The consignment had arrived at destination and is available for delivery;

b) Free-time had expired for taking delivery of the goods without payment of wharfage to show termination of transit;

c) Seven days expired from the date of termination of transit;

Unless these conditions are satisfied, Section 77(2) of Indian Railways Act, 1890, has no application.



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15. Learned counsel for the appellants/applicants further submitted that in these cases, as already stated, no oral or documentary evidence has been adduced on behalf of Railway Administration. Firstly, there is no evidence to show as to when the goods reached destination i.e., Delhi, except making averments in the written statement that the goods had reached destination and delivery had been taken on Indemnity Notes. Secondly, no evidence was let in to show what is the Free-time allowed at Delhi for clearance of the consignment without payment of wharfage. No evidence has been placed before the Court like Arrival Register to prove the receipt of the consignment at the destination on a particular date. Unless these evidences are placed before the Railway Claims Tribunal, the Railway Administration cannot seek protection under Section 77(2) of Indian Railways Act, 1890. According to the learned counsel for appellants/applicants, the Vice Chairman and the Members of the Railway Claims Tribunal proceeded on the wrong assumption that the goods had reached destination and that they were available for delivery and that neither the consignor nor consignee approached the Railways for delivery within 7 days after termination of transit. But, held that goods were released fraudulently on bogus indemnity bonds.

(i) The appellants/applicants had clearly stated in the plaint that on enquiry they came to know that the goods were delivered to some unauthorised persons, who were not entitled to the goods, by production of fabricated Indemnity Bonds. It was further stated by the appellants/applicants that as the original Railway Receipts were available, no delivery could have been effected on Indemnity Bonds. The counsel, however, submitted that this allegation in the plaint does not mean that the appellants/applicants had admitted that the goods reached the destination. This fact is exclusively within the knowledge of the Railways. It is for the Railway Administration to plead and prove the same. The Railway Administration, without any proof of facts for arrival of goods on a particular day, cannot state that the Free-time at the destination station is over and to state that the transit period has expired. As the conditions, which are necessary for establishing their claim for arrival of goods and the discharge of their liability under Section 77 of the Indian Railways Act, 1890, had not been fulfilled, the Railway Administration cannot rely on section 77(2) of Indian Railways Act, 1890 and plead for exoneration.

16. He further submitted that the (Technical) Member and Third Member of the Railway Claims Tribunal proceeded entirely on wrong premise that the Railway Administration had discharged their liability under Section 77(2) of Indian Railways Act, 1890, only because goods were taken delivery on indemnity bonds in April, 1984. Further, Rules 149 and 150 of the 'Goods Tariff' provides when delivery of goods could be effected on Indemnity Notes and also the procedure prescribed for submitting Indemnity Notes. That has not



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been followed in these cases and it is therefore clearly establishes that the alleged delivery on fabricated Indemnity Notes would not absolve the Railways of its liability. The decision relied on by the Railway Claims Tribunal in AIR 1985 MADRAS 360 and confirmed in AIR 1993 SC 1692 by the Apex Court has no application to the facts of the present cases, since in the reported case evidence had been let in to show that the goods booked on 11.6.1973 arrived at destination on 1.7.1973. Relevant Register was filed and also evidence was let in to show that the goods were available for delivery till 20.7.1973 and only on 21.7.1973 delivery was effected. The Railways had proved in that case that the goods were available for delivery at destination from 1.7.1973 to 20.7.1973. In the present case no evidence has been let in to prove the date of arrival and till what date the goods were available. Hence the Railway Claims Tribunal erred in non-suiting the appellants/applicants relying on the decision referred to above viz., AIR 1985 MADRAS 360 and A.I.R. 1993 SC 1692.

17. In these circumstances the learned counsel for the appellants submitted that as the factual aspects, necessary to exonerate the Railway from their liability, had not been properly pleaded and proved by the respondent railways and as such, the Tribunal erred in disallowing the claim of appellants. It is therefore prayed that the above Appeals be allowed and the claims of the appellants be decreed.

18. The learned counsel for the respondent, took time and argued the matter on subsequent hearing dates, reiterated the stand of the railway in its additional written statement and reply statement and referred to the findings of the Technical (Member) and the Third Member. The additional written statement filed in O.A.No.833 of 1990 (C.M.A.No.63 of 1999) is as follows:-

"1. The suit is not maintainable either in law or on facts.

2. This defendant denies all the allegations contained in the Plaint, except those that are expressly admitted hereunder to be true and correct.

3. This Defendant states that M/s Jaitex Lungi Company had booked handloom cotton from Madras to Delhi under following Railway Receipt Nos.055709 of 6.2.84, 065752 of 7.2.84 and 065931 of 11.2.84.

4. This Defendant states that the Railway receipts were endorsed in favour of P.M.S. Traders who in turn had endorsed to M/s Amarpali Boutique.



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any other sum and that he sustained loss to the extent claimed in the suit. The Plaintiff is put to strict proof of actual loss suffered by producing his account books and other documents.

12. This defendant denies the service of valid notice of claim as required by Section 78 B and 80 of Indian Railways Act. The claim notice had been served only after expiry of six months i.e. only on 16.8.84.

13. This Defendant submits that there is no cause of action for the filing of the suit and the one alleged in the Plaint is not correct and is denied.

14. This defendant therefore prays that the suit be dismissed with costs."

The reply statement filed in O.A.No.833 of 1990 (C.M.A.No.63 of 1999) is as follows:-

"1. The Respondent denies all the allegations contained in the application, except those that are expressly admitted hereunder to be true and correct.

2. The application is not maintainable either in law or on facts.

3. The Respondent states that M/s. P.M.S.Traders had booked handloom cotton goods from Madras - Central to Delhi, under P.W.B.No.070889, 070891 dated 8.3.1984 and PWB 094919 PWB 096154 dated 19.3.1984 and 27.3.1984 respectively. The Respondent states that admittedly the goods were intended for M/s Amaepali Bontique and Railway Receipts were taken in the name of self.

4. The Respondent submits that as per the contract of carriage the goods were carried to destination and made available for delivery. But no one turned up for taking delivery within 7 days after termination of transit. However, the goods were taken delivery on production of valid Indemnity Bond by intended consignee in whose favour the Hundi, as well as invoices were drawn. The Indemnity bonds were also executed by the consignor/consignee, to deliver



The Respondent therefore prays that the Hon'ble Tribunal may be pleased to dismiss the application with costs."

19. The specific stand of the Railway Department in the Additional Written Statement in O.A.No.833 of 1990 (C.M.A.No.63 of 1999) is as follows:-

"7. This Defendant states that the consignment had been received at the destination station on 28.2.84 and 7.3.84 and the delivery was effected on 14.4.84 and 26.4.84 on Indemnity Bond long after the expiry of termination of transit period."

The specific stand of the Railway Department in the Additional Written Statement in O.A.No.1213 of 1990 (C.M.A.No.394 of 1999) is as follows:-

"6. This Defendant states that the consignment had been received at the destination station on 11.2.84 and 15.2.84 and the delivery was effected on 4.4.84 and 24.4.84 on Indemnity Bond long after the expiry of termination of transit period which turned out to be forged."

The specific stand of the Railway Department in the Additional Written Statement in O.A.No.389 of 1990 (C.M.A.No.663 of 1999) is as follows:-

"7. This Defendant states that the consignment had been received at the destination station on 28.2.84 and 7.3.84 and the delivery was effected on 14.4.84 and 26.4.84 on Indemnity Bond long after the expiry of termination of transit period."

The specific stand of the Railway Department in the Written Statement in T.A.I.No.328 of 1990 (C.M.A.No.1050 of 1999) is as follows:-

"4. The Defendant states that the consignment was carried to destination on 28.2.1984. Neither the consignee nor the consignor turned up for taken delivery within 7 days after termination of transit."

The above stand was not taken in T.A.I.366 of 1990 (C.M.A.No.670 of 1999) and in T.A.I.No.588 of 1990 (C.M.A.No.770 of 1999) by the railway Department. Further, in all the case, no documentary



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evidence has been let in by railways regarding the date when the goods were received at the destination station. In none of the reply statements, the respondents have taken the stand that the goods arrived at the destination on a particular date. Such stand was also not taken in response to the statutory notice. It is only in the additional written statement in four cases, viz., O.A.No.833 of 1990, O.A.No.1213 of 1990, O.A.No.389 of 1990 and T.A.I.No.328 of 1990, a date has been shown as the date of destination (date of receipt) (i.e.) date of arrival of the goods at the destination station. In other cases, there is no such averment at all. In these four cases, it has been stated that subsequently, in the month of April, 1984 the goods were delivered on indemnity bonds after expiry of termination of transit period. Further, it is contended by the railway department that there was no claim in respect of the goods within seven days from the date of termination of the transit period as envisaged under Section 77(2) of the Railways Act, 1989.

20. The third Member of the Tribunal proceeded on the basis that there is no dispute that the suit consignment reached the destination station, but the applicant/appellant did not claim the goods before the expiry of seven days period after termination of the transit though the goods were wrongly delivered to third party after seven days after termination of transit. The counsel for the appellant herein and the applicant before the Tribunal, however, strongly denied the date of termination of transit as stated by the railway authorities in their additional written statement and that it is not supported by any evidence. It is the specific stand of the appellant that there is no proof adduced whatsoever regarding the date of arrival of the said consignment at the destination station. In fact no documents were filed on behalf of the railway. It is the case of the appellants/applicants that mere oral pleading will not suffice.

21. Learned counsel for the appellants/applicants referred to the judgment reported in AIR 1985 MADRAS 360 (Union of India, Eastern Railway and another vs. M/s St.Joseph Textiles, Karur), and in particular to paragraph No.6, to state that the factual aspect of the above case is relevant for the purpose of distinguishing the appellants/applicants' claim and the same is extracted as such:-

"6. Mr.B.T.Seshadri, learned counsel for the appellants urges the following points for our consideration. In the instant case, the records bear out that on 1.7.73 the consignment booked by the plaintiff and sent by the railways reached the destination. Till 20th July 1973, there was no claim. Thereafter on 21.7.73, the delivery was effected. Under those circumstances, having regards to the liability of the railways under S.73 of the Railways Act



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which speaks of the liability during transit that would not apply. Therefore it is only S.77 of the said Act, that would apply. Under S.77 (1) of the Act, the liability of the railways is that of a bailee under Ss.151, 152 and 161 of the Contract Act. In this case that again will not apply. Therefore, it is only S.77(2) that will squarely apply to the facts of this case. In other words, according to him the railway is not duty bound to explain how the goods were delivered after the 7th day. Therefore, it would amount to a total extension of liability after a period of seven days. This was so laid down by a Division Bench of this Court in Lloyd Bituman Products (P) Ltd. v. Union of India (1980) 2 Mad LJ 363. At that time the limitation that was contemplated under this Act was thirty days. It was now by reason of the amendment reduced to seven days."

22. Learned counsel for the appellants further stated the burden is on the Railways to establish that the goods despatched under railway receipt reached on a particular day and were available for a period of seven days from the termination of the transit, and relied upon a decision reported in AIR 2002 RAJASTHAN 226 (M/s. Rajendra Textiles, Jodhpur - vs. - Union of India and another).

23. In this case, the points to be decided are:-

"(1) Whether in the facts and circumstances of the case as above, the Railway is exonerated of its liability in terms of Section 77(2) of the Indian Railways Act, 1890? and

(2) Whether the appellants/applicants are entitled to succeed in claim petition and to what relief?"

The following relevant facts are taken into consideration before coming to a decision in the above points. The goods were consigned to "self". The Railway Receipts were issued in the name of consignor only. The Railway has to deliver the goods on the original Railway Receipt. In the absence of the original Railway Receipt, the only other manner with which the goods can be released is on the basis of an indemnity bond, in terms of Rule 149(7) of Goods Tariff, which has to be signed by the sender and countersigned by the station master of forwarding railway station, at the request of the consignor. In this case, no such event has happened. Such pleading and finding is not in dispute.

24. The Specific case of the appellants/applicants is that the



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railway receipts were taken in the name of self and all the original documents were sent to the Bank at Punjab and Sind Bank, New Delhi with instructions to deliver the railway receipts to the consignee. The railway receipts were duly endorsed in favour of Punjab Sind Bank to enable them to endorse the same in favour of buyer after receipt of payment. The bank having received the original railway receipts did not endorse them in favour of any other person except one V.K.Goyal which is a subsequent event. The specific case of the plaintiff is that the goods were not delivered when the original railway receipts were produced by V.K.Goyal and on enquiry, they were informed that the goods were delivered to some unauthorised person on production of indemnity bond. If the delivery was effected on the basis of the indemnity bond, it can be done only when the original railway receipts were lost. In this case, the appellants are the consignors and the railway receipts are still with the bank in effect in custody of the appellants. In that situation, according to the Rules, in the case of goods consigned to self and if the railway receipts are lost, the delivery could be granted only when the person claiming the consignment produces an indemnity bond signed by the sender, viz., the appellants herein and countersigned by the Station Master of the forwarding station, viz., Madras Central. In the present case, there no indemnity bond signed by the appellants duly countersigned by the Station Master, Madras Central, produced by the railway as a document in evidence. It is also the case of the appellants that it is borne by the records that no indemnity bond was issued by the Madras Central Station Master. Therefore, the clearance of the goods under indemnity bond as pleaded by the respondents not supported by any material documents before the Claims Tribunal only affirms the view that the receipt and delivery of the consignment has been done in a very mysterious manner and the actual date of receipt of the goods and delivery of the same is not ascertainable. The railways have not proved as to the date of arrival of the goods and the date of termination of transit.

25. In the present case, the goods as is claimed by the railway were delivered on indemnity bonds and the finding of the Tribunal is that the indemnity bonds are bogus. The Vice Chairman and the Members of the Tribunal are unanimous in this aspect. In few case it is pleaded that goods arrived in end of February, 1984 and beginning March, 1984, but, without any material to substantiate such plea. The date of delivery is pleaded as April, 1984 only in few cases. No document is relied as to the date of termination of transit. Rule 149 of Goods Tariff, which has been extracted above, clearly specifies the manner in which the delivery of the goods should be made when Railway Receipt is lost. The said procedure has not been followed and no document has been filed.

26. The goods when accepted by the Railway, Section 77(1) of the Indian Railways Act, 1890 will come into operation. The Railway Administration is responsible as a bailee under Sections 151, 152



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and 161 of the Indian Contract Act, 1872 (9 of 1872) for loss of destruction, damage, deterioration or non-delivery of goods carried by railway within a period of seven days after the termination of transit. It is thereafter Sub Section (2) of Section 77 of Indian Railways Act, 1890 comes into operation. The onus is on the Railway to plead and prove that the goods were available for a period of seven days after termination of transit. The Railway can seek refuge and plead for exoneration under Section 77(2) of the Indian Railways Act, 1890 in a case of non-delivery after expiry of seven days from the date of termination of transit. Therefore, it is for the Railways to first plead and prove that the termination of transit occurred on a particular date and for seven days thereafter the goods were available for delivery. In this case, admittedly, there is no documentary or oral evidence on the part of the Railway to show that the termination of transit occurred on a particular date and the goods were available for seven days. The protection under Section 77(2) of the Indian Railways Act, 1890 will be available only if it is plead and proved by the Railways with regard to the date of termination of transit.

27. It will be pertinent to note that the third Member with regard to Issue No.2 held that the respondent Railway is not absolved of their liability under Section 76B of the Indian Railways Act, 1890 and thereby holding that the goods were not delivered in good faith on production of original railway receipt. In other words, the third Member affirms the issue that the suit consignment was delivered by collusion of the railway staff under bogus indemnity notes. He, however, exonerated the railway only on the ground that the wrong delivery took place after seven days of termination of transit and therefore, the benefit of provision of Section 77(2) of the Indian Railways Act, 1890 is available to the railway. Such finding of the Third Member has to be supported by some evidence or proof by the Railway authorities about the date of termination of the transit.

28. The Madhya Pradesh High Court in Punjab National Bank -vs.- Benniprasad Maheshwari and others reported in AIR 1981 MADHYA PRADESH 95, in a case of non-delivery of goods by railway seeking similar protection, BHACHAWAT, J. - speaking for the Bench, held in Paragraph Nos.20, 21, 22 and 23, as follows:

"20. The learned counsel for the parties were unable to point out the dates when the goods reached the destination station, the dates of delivery of goods to defendant No.2 and also that the goods were delivered to defendant No.2 prior to the dates of endorsements of the respective railway receipts is in favour of plaintiff. It cannot be gainsaid that defendant No.3 could alone be in possession of the documents to prove these facts.



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21. Under Section 73 quoted-above, the railway is liable "for the loss, destruction, damage, deterioration or non-delivery in transit." The expression "in transit" has been used to indicate the responsibility of the railway in respect of the period up to the termination of transit. When the transit terminates has been indicated in Clause (a) of sub-sec. (5) of Section 77 of the Act. It says "unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time so allowed, transit terminates on the expiry of the free time so allowed for the removal of the animals or goods from railway premises without payment of wharfage:"

22. Section 77 of the Act deals with the responsibility of a railway administration after termination of transit. The period of time after the termination is divided into two distinct period of time (1) within 7 days and (2) after seven days of the termination of transit. Sub section (1) of Section 77 of the Act lays down that for loss, etc. of the goods within 7 days the liability of the railway would be that of a bailee; but for goods carried at owner's risk rate it shall be liable only on proof of negligence or misconduct. Sub-section (2) of Section 77 of the Act lays down that the railway administration shall not be liable for loss etc., after the expiry of 7 days after termination of transit. Thus, this Sec.77 which is also in Chapter VII alters or varies the absolute liability of the railway under Section 73 of the Act. In this view of the matter, if the railway, defendant No.3 wanted to take advantage of Section 77 of the Act, it was obligatory on it to have pleaded as to what was the free period allowed when the goods had actually reached and were actually delivered.

23. It is a fact that goods have not been delivered to plaintiff; who has been held to be entitled to; so it is a case of non-delivery and as defendant No.3 who was possessed of the requisite information about the termination of



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transit to take benefit of alteration of its absolute liability under Section 73 of the Act; has neither pleaded nor placed necessary facts therefore; we have to infer that the non-delivery was in transit. We may make it clear that delivery to a wrong person, in the instant case to defendant No.2, would not take the case out of the ken of the expression 'non delivery' so far as the plaintiff is concerned." (emphasis supplied)

Similarly, a view has been expressed by the Rajasthan High Court in M/s.Rajendra Textiles, Jodhpur - vs. - Union of India reported in A.I.R. 2002 Rajasthan 226 and the observation of the learned Judge, of which I approve and extract the same for the sake of clarity and emphasis:-

"11. The burden is on the Railways to establish that goods under railway receipt were safe for the period of 7 days from the termination of the transit, which expired on 2.8.1986. Admittedly, the Railways has re-booked the consignment on 1.8.1986 and as such, on 2.8.1986, the date when the period of 7 days was to expire, the goods were not safe with the Railways. From the established facts, since the goods were not in existence with the Railways on the date when the period of 7 days was to expire and therefore, the respondent cannot claim exemption as provided under sub-section (2) of Section 77. The learned counsel for the appellant further submits that in the written statement, no such plea of exemption as envisaged in sub-section (2) of Section 77 was raised. The respondent also did not plead that the goods remained intact up to 2.8.1986 i.e. for the period of 7 days after termination of transit. The respondent can only claim exemption under sub-section (2) of Section 77, if they plead and prove that goods/consignment booked by the appellant remained intact for the period of 7 days after the termination of the transit. In the instant case, neither the respondent pleaded this fact nor proved. Admittedly, the respondent did not lead any evidence."

The pleadings in the additional written statement taken by the Railway with regard to the delivery of goods in April, 1984 is only a pleading without any documentary evidence or proof. It is



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surprising to note that such pleading is not available in respect of the date of termination of transit in respect of two of the consignment in question and no documents were filed. Therefore, the key issue to be decided is, the date of termination of transit which the railway failed to prove. Therefore, they cannot seek shelter under Section 77(2) of the Indian Railways Act, 1890.

29. The decision of the Supreme Court reported in AIR 1993 Supreme Court 1692 (St. Joseph Textiles- vs. - Union of India and another) confirming the decision of the Madras High Court in Union of India, Eastern Railway - vs. - M/s. St. Joseph Textiles, Karur reported in AIR 1985 Madras 360, will not support the case of Railway as can be noticed from the factual aspects of that case as is stated in paragraphs 6, 7 and 8, which reads as follows:-

"6. We have already pointed out above that taking into consideration the period of free time allowed for removal of the goods in question, the liability of the Railways, extended only upto 10th July, 1973. Since admittedly the goods were wrongly delivered or delivered against a non-genuine receipt on 21.7.1973, the absolute bar created by Section 77(2) for claiming damages against the Railways had come into operation at the end of the 10th July, 1973.

7. In the present case, the appellant had retained the ownership in goods with it since the goods were not to be parted except on the presentation of the Parcel Way Bill and the payment of the bank when the goods would reach the destination Railway Station, viz., Azim Ganj Railway Station. In any case, it was expected to keep itself informed about the arrival time of the goods at the said destination. As stated earlier, the goods arrived at the destination railway station on 1.7.1973. It ought to have, therefore, taken precaution to see that the goods were lifted by it or its agents or its consignees during the said period. In any case, after the expiry of the said period when the appellant could have learnt that the goods were not lifted by the consignee, it was its duty to take prompt steps to remove the goods itself or through its agents. As pointed out above, the appellant-firm moved into the matter only on 12.9.1973, i.e., about two months after the expiry of the period of liability of the Railways.



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8. Since, admittedly a wrong delivery or loss of the goods in the present case was not during the transit of the goods, provisions of Sections 72 and 73 of the Act would not be applicable to the facts of the present case. Hence, the decision of this Court in Union of India - vs. - W.P. Factories, AIR 1966 SC 395 would be inapplicable. It may, however, be pointed out that in that case the responsibility of the Railways under Section 72 of the Act was under consideration and it was held that responsibility cannot be cut down by any rule. As has been pointed out above, the present case falls under Section 77(2) which itself provides for the limited period of liability as a bailee." (emphasis supplied)

In Joseph Textiles case (AIR 1993 Supreme Court 1692), the defence of the railway is that the goods which were booked under Railway Receipt Ex.B-1 on 11.6.1973 reached the concerned railway station on 1.7.1973 and made available for more than 7 days. No one took delivery till 20.7.1973 and on 21.7.1973, the parcel was taken delivery. The request for rebooking was made on 12.9.1973 (i.e.) two months after termination of transit. In the case of Joseph Textiles the railway relied upon Ex.B-6, the railway receipt on which the delivery was effected, though it was established as forged one. The railway further relied upon Ex.B-7 marked through their witness D.W.1, the register maintained in the railway station concerned to show that the goods were received on 1.7.1973 and delivered on 21.7.1973. This was not disputed by the plaintiff and therefore the date of receipt of goods and date of delivery is not in dispute. The Court going in several documents filed by the railway, held that the railway was careless and negligent while delivering the goods on 21.7.1973, however, held that the delivery was effected after seven days of termination of transit and therefore, the railway is entitled to the statutory protection under Section 77(2) of the Indian Railways Act. There is no such evidence in the present cases and the Railway has not proved any of the above facts to seek protection under Section 77(2) of the Indian Railways Act, 1890.

30. In the case of St. Joseph Textiles - vs. - Union of India and another (AIR 1993 Supreme Court 1692), the specific case of the Railway is that the goods arrived at Railway station was on 1.7.1973 and the free time allowed for removal in question was extended only upto 10.7.1973 and the goods were wrongly delivered against a non-genuine receipt on 21.7.1973. This was supported by documentary evidence. There is no such proof filed in the present cases. It is therefore, clear that unless, the Railway plead and proved the date of termination of transit and that within the period allowed, the goods were not taken delivery, the liability of



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the Railway is not discharged in terms of Section 77(2) of the Indian Railways Act, 1890. The view taken by the (Technical) Member and the Third Member are contrary to the provisions of the Act and based on a misreading of the decision of the Apex Court reported in AIR 1993 Supreme Court 1692 (cited supra).

31. The railway in this case claimed that the goods were delivered on indemnity bond after the termination of transit and pleaded that they will stand exonerated of their liability under Section 77(2) of the Indian Railways Act, 1890. Rule 149(1) and (7) of Goods Tariff, which relates to delivery of goods on indemnity bond, reads as follows:-

"149. Delivery of goods when Railway Receipt is lost.- (1) When a Railway Receipt has been lost, mislaid, or is for other reasons not forthcoming, the Railway reserves the right to demand and Indemnity Note before giving delivery of animals or goods therein concerned. For specimen form, see Appendix 1/2."

"(7) In the case of goods sent value-payable or goods consigned by the sender to "self" when the Railway Receipts have been lost, delivery may be granted only when the person claiming the consignment produces a stamped Indemnity Note signed by the sender and countersigned by the Station Master of the forwarding station. The name stamp of the forwarding station must be impressed on the note immediately below the signature of the Station Master. This note must be endorsed by the sender in favour of the person to whom the consignment is to be delivered."

In the present case, consignment has been sent to "self". Therefore, as per Rule 149(7) of Goods Tariff, if the Railway Receipts are lost, delivery can be made only on an indemnity note signed by the sender and countersigned by the Station Master of the forwarding Railway Station. None of the above documents have been produced by the railway before the Tribunal. There is no proof about the date of termination of transit and no valid document to show that the goods were delivered to the appellants/applicants or to the authorised person or to any such person on indemnity bond only after the period prescribed to seek protection under Section 77(2) of the Indian Railways Act, 1890. For the purpose of seeking protection under Section 77(2) of the Indian Railways Act, 1890, the Railway has not established the date on which the goods landed and when the period of seven days ends after termination of transit. In any event as claimed by the Railway, that the goods were delivered under indemnity bond, has not been properly established by



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any oral or documentary evidence. According to the appellants/applicants, the original railway receipts are available. Only in the case of Railway Receipts being lost or mislaid, the question of indemnity note in terms of Rule 149 of Goods Tariff will arise. Therefore, there is a violation of Rule 149(1) and (7) of the Goods Tariff. Since, there is no proof for the date of arrival of the goods and no proof as to the actual date of termination of transit, the railway having not delivered the goods to the applicants, is bound to compensate the loss to the appellants/applicants in terms of Section 77(1) of the Indian Railways Act, 1890. Therefore, in the facts and circumstances of the present case, the Railway cannot seek protection under Section 77(2) of the Indian Railways Act, 1890. For the reasons aforesaid, this Court has no hesitation to hold that the liability of the Railways has not been discharged.

32. Now coming to the interest claimed, the finding of the Vice Chairman is that if the goods had been delivered to the rightful person, the appellants/applicants would have realised the value of the goods. In view of the finding with regard to non-delivery of goods, in terms of Section 77(1) of the Indian Railways Act, 1890, the appellants/applicants are entitled to claim interest on the locked up capital. The appellants/applicants claim 12% interest on the capital amount blocked. This was as a measure of damage in view of the loss sustained by the appellants/applicants for the locked up capital i.e., being the value of the goods not-delivered. The Vice Chairman relied upon the decision in Union of India -vs- Steel Stock Holders, Syndicate, Poona reported in A.I.R. 1976 S.C. 879, which is a case relating to inordinate delay in delivery of goods and consequent loss by way of interest on locked up capital. The Supreme Court in that case affirmed the trial Court's decree granting 6% interest by way of damages as against 12% claimed by the plaintiff. The Vice Chairman relying on the above stated decision of the Supreme Court, accepted the claim of the appellants/applicants, but awarded 6% interest as damages for locked up capital as against 12% claimed. Further, the application was allowed with further interest at 12%, on the value of the goods not delivered, from the date of filing of the suit till date of recovery, with proportionate costs. The (Technical) Member on the other hand negatived the claim of the appellants/applicants only on the ground that no specific case has been made out by the appellants/applicants to establish damage by way of loss of interest on locked up capital. He held that no pre-suit interest arises in the case. The Third Member on one hand erroneously stated that the appellants/applicants have not claimed amount as damages. He also observed that the appellants/applicants failed to establish any commercial custom or agreement to claim interest and he has not informed the opposite party, viz., the railway that he is claiming such interest. The Third Member, however, observed that in a given case, appellants/applicants may be entitled to claim damages on the basis of locked up capital and in the instant case, the



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appellants/applicants had claimed only interest as such. Therefore, the appellants/applicants are not entitled to claim interest for the pre-suit period. As extracted above, the appellants/applicants have made the interest claim only as a measure of damage on the amount locked due to non-delivery of the goods for the period prior to the institution of the suit. The decision of the Supreme Court in AIR 1976 Supreme Court 879 (cited supra) as has been extracted by the Vice Chairman supports the claim for interest by way of damages for the locked up capital. In the facts and circumstances of the case, the railway having not absolved of its liability in terms of Section 77(1) of the Indian Railways Act, 1890, the interest awarded by the Vice Chairman is appropriate in the facts and circumstances of the case.

33. The two Points which are considered by this Court are answered in favour of the appellants/applicants. The other issues as is framed by the Tribunal does not require any further consideration in view of the finding of this Court. The appellants/applicants succeed in all the appeals.

34. In the result, for the aforesaid reasons and findings as above, all the appeals are allowed setting aside the orders of the (Technical) Member and the Third Member of the Tribunal. The orders of the Vice Chairman dated 26.11.1997 allowing the six applications in part is upheld. There will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ts.

To

1. The Railway Claims Tribunal
Madras Bench.

2. The General Manager,
Union of India,
Southern Railway,
Chennai-600 003.



3. The General Manager,
Union of India.
Northern Railway,
New Delhi.

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4. The Record Keeper,
V.R. Section,
High Court,
Madras.

6 ccs to Mr.B.T. Seshadri, Advocate, sr. 22355, 22353, 22356, 22357,
22354 & 22352

6 ccs to Mr.V.G. Suresh Kumar, Advocate, Sr. 22667, 22666, 22665,
22663, 22662 & 22661

in C.M.A.Nos.63, 394, 663,
670, 770 and 1050 of 1999

KLT (CO)
kk 17/5